

JUDGE SULLIVAN

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROBERT G. LOPEZ, an individual,)
Plaintiff,)
v.)
NORDSTROM, INC.)
Defendant.)

16 CV 3194 1

Civil Action No.

JURY TRIAL DEMANDED

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION AND RELATED CLAIMS**

Plaintiff, Robert G. Lopez, alleges his complaint against Defendant, Nordstrom, Inc., as follows:

NATURE OF THE ACTION

1. This action arises from Defendant's infringement of Plaintiff's "ownership" and exclusive "use" rights in the mark LES NYC® and LOWER EAST SIDE™, in conjunction with clothing and related goods. Despite Plaintiff being the registered owner of the trademark LES NYC® and LOWER EAST SIDE™ and offering various clothing items under such brand names, the Defendant has infringed Plaintiff's rights in the aforementioned marks by selling, and offering for sale clothing items under Plaintiff's trademark. Plaintiff has already experienced "actual confusion" in connection with this matter and is likely to continue to experience confusion as to the affiliation or connection between the Defendant and Plaintiff resulting in the unjust enrichment of Defendant by using Plaintiff's registered trademarks.

U.S. DISTRICT COURT
FILED
APR 29 2016
S.D. OF N.Y.
3

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1051 *et seq.*, 15 U.S.C. Sections 1114-1116; under Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a) and Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).

3. This Court has personal jurisdiction over the defendant because defendant engages in continuous and significant business activities in, and directed to the State of New York within this judicial district and has several store locations in New York County and because defendant has committed tortious acts aimed at and causing harm within the State of New York and this judicial district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because it is where Plaintiff resides and the defendant transacts business and/or maintains an office or business location in this district, and because a substantial portion of the events giving rise to the asserted claims have occurred, and continue to occur, within this district. Furthermore, the damage to Plaintiff and its intellectual property described herein continues to occur in this judicial district.

THE PARTIES

5. Plaintiff, Robert G. Lopez is an individual residing at 230 Clinton Street, Apt. #11C, New York, NY 10002.

6. Upon information and belief, Defendant Nordstrom, Inc. is a Washington corporation with a principal place of business at 1617 Sixth Ave – Suite 600, Seattle, Washington 98101.

FACTS

7. Since at least as early as 1999, Plaintiff Robert G. Lopez has been selling headwear, t-shirts, sweaters, hooded sweatshirts and other clothing items under the LES NYC® and LOWER EAST SIDE™ brand names.

8. Since at least as early as 1999, Plaintiff has been independently operating a clothing business under the trade name L.E.S. CLOTHING CO.™, which has sold headwear, t-shirts, sweaters, hooded sweatshirts and other related clothing items under the marks LOWER EAST SIDE™, and LES NYC®. Since at least as early as 2010, Plaintiff has also been selling clothing items under the mark LOYALTY EQUALS STRENGTH™.

9. In addition to selling and offering for sale clothing items under the LOWER EAST SIDE™, LES NYC® and LOYALTY EQUALS STRENGTH™ brand names, Plaintiff has also continuously sold and offered for sale various clothing items including hooded sweatshirts which bear the LOWER EAST SIDE™ mark in various font and design styles which are prominently displayed on the front and/or back of the headwear, t-shirts and/or sweaters.

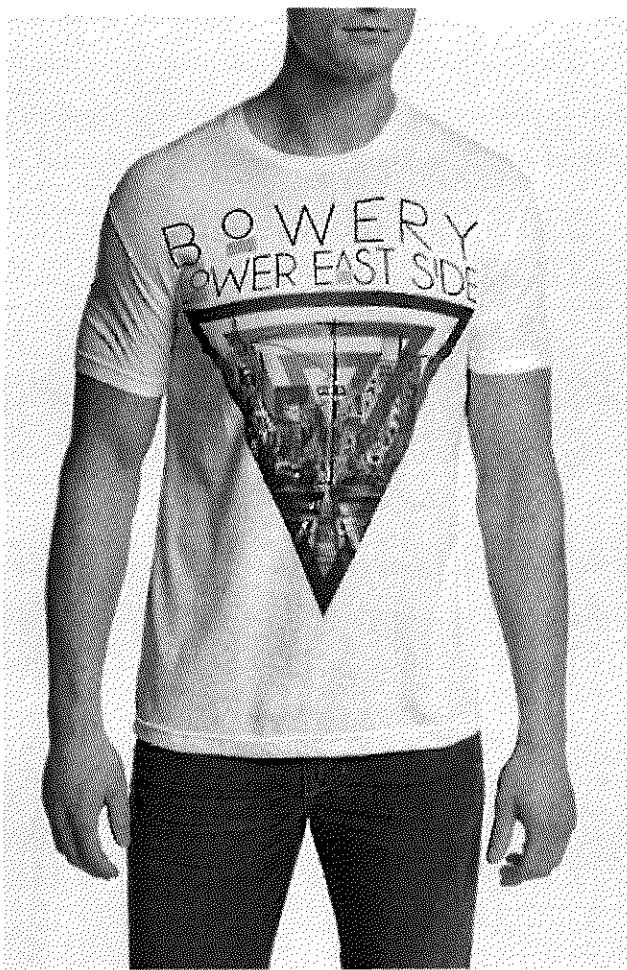
10. Plaintiff sells, and promotes the sale of his clothing via his website www.lesclothing.com, through order forms, and his t-shirts and sweaters are also available for sale in several retail locations in New York and other States.

11. Plaintiff advertises his LES CLOTHING CO™ LOWER EAST SIDE™ and LES NYC® brands and clothing items through flyers, posters, stickers and through grass root street marketing methods such as painted “street murals.” Plaintiff also regularly conducts photo shoots of customers who purchase his LOWER EAST SIDE™ and LES NYC® clothing items to be included in magazine advertisements and marketing materials.

12. Plaintiff is the registered owner of United States Trademark Registration No. 4,549,880 for the mark LES NYC®. (See Exhibit A).

13. Plaintiff is the registered owner of New York State Trademark Registration No. R31067 for the mark LOWER EAST SIDE™. (See Exhibit B).

14. Plaintiff is informed and believes and thereon alleges that Defendant is marketing, promoting, selling and offering for sale a t-shirt bearing the LOWER EAST SIDE™ mark depicted in the picture below and also promoting the t-shirt under the title and heading 'Lower East Side' T-Shirt with emphasis on the Lower East Side portion of the mark as if the aforementioned brand is the source of the t-shirt. (See Exhibit C).



15. Plaintiff was been contacted by several long-standing customer of his LES CLOTHING CO™ LOWER EAST SIDE™ and LES NYC® clothing products and was asked if

he released t-shirt design with the LOWER EAST SIDE™ brand that was sold at Defendants retail stores.

16. Defendants use of Plaintiff's LOWER EAST SIDE™ brand in connection with clothing has already caused and will continue to cause confusion as to the source or affiliation of the source of the clothing related goods bearing the LOWER EAST SIDE™ mark.

17. Defendants business status as a major retailer of apparel and accessories also has the capability of causing reverse confusion where consumers of clothing products will think that all LOWER EAST SIDE™ clothing related products are sponsored or produced by defendant.

FIRST CAUSE OF ACTION
TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114-1116)

18. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 17 of this Complaint.

19. The use in commerce by Defendant of an identical and slightly identical version of Plaintiff's registered trademark is likely to cause confusion, mistake and deception among members of the public and in trade as to the source, origin, or sponsorship of defendants' goods and services. Such use by defendant constitutes a clear and direct infringement of Plaintiff's rights in and to Plaintiff's registered trademark, and has resulted in injury and damage to Plaintiff that will continue if defendant is not ordered to cease all use of the LES NYC® mark.

SECOND CAUSE OF ACTION
UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

20. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 19 of this Complaint.

21. Plaintiff has the exclusive right to market, brand and provide clothing related goods using the LES NYC® mark.

22. Defendant by reason of the aforementioned acts, have falsely described, represented and designated the origin of its goods and services. Defendants' activities already have confused the public into believing that Defendants and Plaintiff's clothing goods and accessories come from one and the same source, and defendants continued activities are likely to create further confusion and deceive the public concerning the source of the goods/services.

23. Defendant have unfairly profited from the actions alleged herein and will continue to unfairly profit and become unjustly enriched unless and until such conduct is enjoined by this Court.

24. By reason of Defendant's willful acts conducted in conscious disregard for Plaintiff's rights, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(a).

THIRD CAUSE OF ACTION

COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION

25. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 24 of this Complaint.

26. Defendant's conduct constitutes deception by which Defendant goods will be palmed off as those of Plaintiff. Such conduct constitutes trademark infringement and unfair competition in violation of the laws of the State of New York.

27. Defendant's unauthorized use of Plaintiff's LES NYC® mark is likely to continue to cause further confusion to the public as to the clothing goods and accessories of the respective parties.

28. By reason of the foregoing, Defendant has infringed and continues to infringe on Plaintiff's common law rights in the LES NYC® mark and defendant has become unjustly enriched by such acts of infringement.

29. Defendant's unlawful conduct has been and will continue to be willful or willfully blind to Plaintiff's rights, as Defendant has reason to know of Plaintiff's rights.

**FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT**

30. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 29 of this Complaint.

31. Defendant has unjustly retained profits from the sale of clothing goods and accessories bearing Plaintiff's LOWER EAST SIDE™ and/or LES NYC® marks.

32. Defendant's actions constitute unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. Entry of an order and judgment requiring that all defendant, its subsidiaries, officers, agents, servants, employees, owners, and representatives, and all other persons or entities in active concert or participation with them, be preliminarily and, thereafter, permanently enjoined and restrained from (a) using in any manner the trade name, trademark, domain name or other indicia or origin, including in whole or part the term LOWER EAST SIDE™, LES NYC®, or any colorable imitation thereof; (b) advertising, operating a website, using business stationery or offering any goods or services using the trade name, trademark, domain name, URL, or any other indicia of origin including in whole or part the term LES NYC®, or any colorable imitation thereof; (c) otherwise engaging in any acts of unfair competition and infringement which tend to injure Plaintiff's rights in the LES NYC® mark.

2. That Defendant be required to account to Plaintiff for any and all profits derived by it, and to compensate Plaintiff for all the damages sustained by reason of the acts complained of herein, and that the damages herein be trebled pursuant to the Trademark Act.
3. That Defendant be ordered to deliver up for destruction any and all infringing materials bearing the LOWER EAST SIDE™ and LES NYC® marks, and any colorable imitation thereof, in whole or part.
4. That Plaintiff be awarded punitive damages.
5. That Defendant be required to place advertisements or send notifications to past and present customers that it improperly has been using the LES NYC® mark.
6. That Plaintiff be awarded the cost and disbursements of this action.
7. That Plaintiff have such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: April 28, 2016
New York, New York

Respectfully submitted,
Robert G. Lopez Pro Se



Robert G. Lopez
Pro Se Plaintiff
230 Clinton Street – Apt. #11C
New York, New York 10002
(917) 868-1698

EXHIBIT A



United States Patent and Trademark Office

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LES NYC

Word Mark LES NYC
Goods and Services IC 025. US 022 039. G & S: Baseball caps and hats; Hooded sweatshirts; Short-sleeved or long-sleeved t-shirts; T-shirts. FIRST USE: 19991200. FIRST USE IN COMMERCE: 19991200
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85335314
Filing Date June 1, 2011
Current Basis 1A
Original Filing Basis 1A
Published for Opposition April 1, 2014
Registration Number 4549880
Registration Date June 17, 2014
Owner (REGISTRANT) Lopez, Robert G. INDIVIDUAL UNITED STATES 230 Clinton Street - Apt. #11C New York NEW YORK 10002
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

EXHIBIT B

New York State Department of State Certificate of Trademark Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Registration Number: R31067 **Registration Date:** 06/06/07

Applicant: **ROBERT G. LOPEZ**
230 CLINTON STREET APT. #11C
NEW YORK NY 10002-

***State of Incorporation or
Partnership Organization:***

Class Numbers: 25

Date First Used in NYS: 12/1999 **Date First Used Anywhere:** 12/1999

Trademark Description:

LOWER EAST SIDE

The mark is comprised of the words "Lower East Side" in stylized letters with an underline and overline.

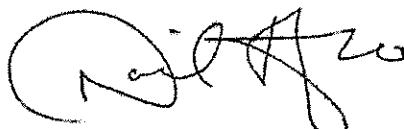
Description of Goods:

Clothing, namely, T-shirts, Hooded Sweatshirts, Vest, Hats and Caps as adopted from the USPTO.

*WITNESS my hand and the seal of the State of New York In
the City of Albany on this:*

Thursday, August 16, 2007

by:



Special Deputy Secretary of State



EXHIBIT C

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